



Commonwealth  
of Massachusetts

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*One Ashburton Place, Room 411*

*Boston, MA 02108*

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### *Advisory Opinion*

July 19, 2000

AO-00-16

Geline W. Williams, Executive Director  
Massachusetts District Attorneys Association  
1 Bulfinch Place – Suite 202  
Boston, MA 02114

Re: Ballot Question Opponent's 150 Word Argument  
Secretary of State's Determination

Dear Ms. Williams:

This letter is written in response to your July 11, 2000 letter requesting an advisory opinion. Your letter concerned the request of the Secretary of the Commonwealth (the "Secretary") to the Massachusetts District Attorneys Association (the "MDAA") to prepare the opponent's 150-word argument against a ballot question for the Secretary's *Information for Voters Booklet* (the "Booklet"). This advisory opinion will also confirm OCPF staff's advice provided during a telephone conversation with you on July 11, 2000.

You have stated that the ballot question at issue is captioned "Drug-Dependency Treatment and the Use of Drug-Crime Fines and Forfeitures." The question has met all procedural requirements and will appear on the November 2000 ballot. The District Attorneys unanimously oppose this ballot initiative. They, together with the Massachusetts Chiefs of Police and various civilians, have filed suit against the Secretary and the Attorney General, asserting constitutional infirmities in the ballot initiative. That suit is pending before the Supreme Judicial Court. Because of the District Attorneys' public position against this ballot question, the Secretary, by letter to you dated July 6, 2000, has selected the MDAA to prepare the 150-word argument required by M.G.L. c. 54, §54. A copy of the Secretary's letter is attached for reference.

You note that the eleven District Attorneys are elected officials and that the MDAA is statutorily referenced at M.G.L. c. 12, § 20D, which specifically provides for the appointment of an Executive Director.

In light of the Supreme Judicial Court's opinion in Anderson v. City of Boston, 276 Mass. 178 (1978), appeal dismissed, 439 U.S. 1069 (1979), you have asked three questions.

### Questions

- (1) May the District Attorneys or the MDAA prepare the opposing argument to this ballot question?
- (2) May the eleven District Attorneys append their names to the bottom of the opposing argument instead of your name and the MDAA as requested by the Secretary of State?
- (3) May the MDAA be listed in the Secretary's Booklet as a resource and provide information about this ballot question when contacted by voters?

### Answers

- (1) Yes, with respect to the MDAA.
- (2) This question falls within the jurisdiction of the Secretary of State.
- (3) Yes.

### Discussion

In Anderson, the Supreme Judicial Court concluded that the campaign finance law, M.G.L. c. 55, was comprehensive legislation that prohibits the use of public funds "to advocate a position which certain taxpayers oppose." Therefore, the "State government and its various subdivisions should not use public funds to instruct the people, the ultimate authority, how they should vote . . ." 376 Mass. at 193-195.

Accordingly, this office has concluded that State government and its various subdivisions, which I assume includes the MDAA<sup>1</sup>, may not expend public resources<sup>2</sup> or contribute anything of value in support of or opposition to a ballot question unless expressly authorized by state law. See AO-98-11, AO-97-16 and AO-96-03. Consistent with this principle, the Legislature has enacted special laws authorizing or requiring certain specified information to be distributed to voters. For example, four municipalities have obtained legislation authorizing the distribution to voters of a booklet similar to the one distributed by the Secretary of State. See ch. 630 of the Acts of 1989 (Cambridge), ch. 274 of the Acts of 1987 (Newton), ch. 180 of the Acts of 1996 (Sudbury), and ch. 89 of the Acts of 1998 (Burlington). See also G.L. c. 43B, § 11 (providing for a charter review commission's distribution of a report to voters).

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<sup>1</sup> Section 20D of M.G.L. c. 12 provides for your appointment and also states that the "executive director may expend such funds as are appropriated [by the commonwealth] therefor, together with additional funds from federal grants and other contributions that may be made available for [specified] purposes, and may hire such professional assistants as shall be authorized." In our telephone conversation, you informed me that MDAA staff, equipment and supplies are, in fact, funded primarily by the commonwealth. MDAA staff also receive standard state employee benefits, e.g. health insurance and pension benefits.

<sup>2</sup> Public resources include, but are not limited to: staff time, office space, stationery and office supplies, office equipment such as telephones, copier and fax machines and word processors, as well the use of a state, county or municipal seal. Even the occasional, minor use of public resources for a political purpose is inconsistent with state law and should be avoided.

Although M.G.L. c. 54, § 54 does not on its face authorize the use of public resources to influence a ballot question, the statute's application to a particular ballot question may result in such a use. Section 54<sup>3</sup> requires the Secretary to print and send to the commonwealth's voters information regarding each ballot question. This mandate is accomplished by the Secretary's Booklet, which must contain arguments of no more than 150 words for and against each question.

Section 54 further provides that the arguments must be prepared by the "principal proponents and opponents" of the question. For the purposes of section 54, "the principal proponents and opponent are those persons determined by the secretary to be best able to present the argument for and against the measure, respectively, at the time the measure is finally received by the secretary for submission to the voters . . ." M.G.L. c. 54, §54. By letter dated July 6, 2000, the Secretary informed you that

It has been determined that your organization is best able to present the argument against the ballot question entitled ***Drug-Dependency Treatment and the Use of Drug-Crime Fines and Forfeitures***. Therefore, you have been selected to write the argument required by General Laws chapter 54, section 54, to appear in the ***Information for Voters Booklet***. (Italics and boldface in original.)

The Secretary's letter also notes that your name and contact information will be printed in the Booklet. According to the Secretary's Election Division, similar information will be listed for the principal proponents and opponents for each ballot question.

In carrying out his statutory mandate under section 54, the Secretary has apparently determined that MDAA is the principal opponent best able to articulate the arguments against this ballot question. Consequently, the application of section 54 in this case authorizes the use of public resources by MDAA to prepare the 150-word argument and authorizes MDAA to serve as contact for those seeking further information from the question's principal opponent. To conclude that MDAA could not undertake these activities would mean that the Secretary could not carry out his statutory mandate. If MDAA cannot act, the Secretary would have to seek arguments from a person or organization other than the one "best able to present the argument . . . against the measure." Such a result is not only inconsistent with section 54 but would be unfair to the measure's opponents and the commonwealth's voters since it could prejudice or at least reduce the robustness of the debate envisioned by section 54.

In questions (1) and (2), you also asked if the District Attorneys themselves could prepare the opposing arguments and append their names, instead of your names, at the bottom of the argument. In response, I reiterate the language of the Secretary's letter, which states that the MDAA is "best able to present the argument against the ballot question . . ." This aspect of your question, i.e. who is the "principal opponent" of this ballot question, is not a question of campaign finance law but one of election law. You should therefore contact the Secretary's office directly for guidance on this point.

For all the above reasons, the MDAA may prepare the 150-word argument against the above referenced ballot question and be listed in the Secretary's Booklet. The de facto statutory authorization to prepare the argument and serve as contact does not authorize you, the MDAA or others to use public resources to campaign against the ballot question. For example, the MDAA may not use public

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<sup>3</sup> Section 54 is based upon the Massachusetts Constitution, which mandates that the Secretary send the text of a ballot question, a summary and "arguments for and against" each question to the voters. See Amendment, Article 48 as annulled and superseded by Amendment, Article 108.

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resources to distribute advocacy or informational materials about the ballot question to voters on its own initiative. See OCPF interpretive bulletins, IB-91-01 and IB-95-03.

This opinion is issued within the context of the Massachusetts campaign finance law and is provided solely on the basis of representations in your letter and in your conversation with OCPF staff. Please contact us if you have further questions.

Sincerely,

A handwritten signature in cursive script, reading "Michael J. Sullivan", followed by a vertical line.

Michael J. Sullivan

Director

Enclosure

cc: The Honorable William F. Galvin, Secretary of the Commonwealth

John Barr, Elections Division, Office of the Secretary of the Commonwealth